

Patricia P. Hollenbeck (SBN 121765)  
Rebecca G. Church (SBN 259652)  
**DUANE MORRIS LLP**  
750 B Street, Suite 2900  
San Diego, CA 92101-4681  
Telephone: (619) 744-2200  
Facsimile: (619) 744-2201  
E-mail: phollenbeck@duanemorris.com  
rchurch@duanemorris.com

David E. Jones (*admitted pro hac vice*)  
**LOGAN & LOWRY, LLP**  
102 East Third Street  
P.O. Box 452469  
Grove, Oklahoma 74345  
Telephone: (918) 786-7511  
Facsimile: (918) 786-5687  
E-mail: djones@loganlowry.com

Attorneys for JOHN ELMBURG, ROBERT  
ELMBURG, ERIC ELMBURG, ROCKY  
FLICK, CRESTWOOD HOLDINGS, INC. and  
BERGAN, LLC

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL MONTGOMERY,  
Plaintiff,

v.

WAL-MART STORES, INC.;  
KINDERHOOK INDUSTRIES II, L.P.;  
KINDERHOOK INDUSTRIES, L.L.C.;  
KINDERHOOK CAPITAL FUND II, L.P.;  
CRESTWOOD HOLDINGS, INC.;  
BERGAN, L.L.C.; JOHN ELMBURG;  
ROBERT ELMBURG; ERIC ELMBURG;  
ROCKY FLICK; HOME DEPOT U.S.A.,  
INC.; DOES 1 through 20 inclusive,

Defendants.

Case No.: 12CV3057 JLS (DHB)

**DECLARATION OF ERIC  
ELMBURG, MANAGER OF  
BERGAN, LLC IN SUPPORT  
MOTION TO DISMISS FOR  
LACK OF STANDING (12(B)(1))  
AND FAILURE TO STATE A  
CLAIM (12(B)(6))**

Date: April 11, 2013  
Time: 1:30 p.m.  
Cttrm: 3B  
Judge: Hon. Janis L. Sammartino

1 I, Eric Elmburg, declare as follows:

2 1. The statements made in this declaration are based upon my personal  
3 knowledge, except where states upon information and belief, and if called to testify  
4 with regard to the same, I could do so competently.

5 2. Bergan, LLC, ("Bergan") is an Oklahoma limited liability company. I  
6 am a manager of Bergan.

7 3. In 2002, the year of the Montgomery incident, I was a minority  
8 stockholder of Blitz U.S.A., Inc., an Oklahoma corporation ("Blitz").

9 4. In 2002, Blitz sold pet products and automotive products, including  
10 gasoline containers.

11 5. On October 1, 2006, Blitz spun off its pet division in a Type D tax -free  
12 reorganization pursuant to I.R.C. § 368(a)(1)(D).

13 6. Following the spinoff, Blitz and Bergan were separate entities, each  
14 owned by the parent company, Crestwood Holdings, Inc., an Oklahoma corporation  
15 ("Crestwood Holdings").

16 7. On September 21, 2007, Crestwood Holdings sold 100% of the Blitz  
17 stock to Blitz Acquisitions, a Delaware limited liability company, an entity completely  
18 unrelated to Bergan and Crestwood Holdings.

19 8. Following Crestwood Holdings' sale of Blitz stock to Blitz Acquisitions,  
20 Bergan and Blitz were not affiliated entities.

21 9. On November 6, 2011, Blitz and Blitz Acquisitions filed for bankruptcy  
22 protection under Chapter 11 in the matter styled: *In re: Blitz U.S.A., Inc. et al.*,  
23 United States Bankruptcy Court for the District of Delaware, Case No. 11-13603-  
24 PJW. Such bankruptcy action is currently pending.

25 I declare under penalty of perjury that the foregoing is true and correct, except  
26 for those matters stated on information and belief and as to those, I believe them to be  
27 true.  
28

1 Executed on this 5<sup>th</sup> day of March, 2013 at Monkey Island, Oklahoma.  
2  
3

4   
Eric Elmburg, manager of Bergan, LLC  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28